

AMENDED IN SENATE MARCH 29, 2011

AMENDED IN SENATE MARCH 15, 2011

**SENATE BILL**

**No. 156**

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**Introduced by Senator Emmerson**

(Principal coauthors: Assembly Members Cook and Silva)

**(Coauthor: Senator Cannella)**

(Coauthors: Assembly Members Gorell, Harkey, Jeffries, Nestande,  
and Wagner)

February 2, 2011

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An act to repeal and amend Sections 17053.80 and 23623 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 156, as amended, Emmerson. Income tax: credits: full-time employees: hires.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit for taxable years beginning on or after January 1, 2009, in the amount of \$3,000 for each full-time employee hired by a qualified employer. Those laws define "qualified employer" as a taxpayer that employed 20 or fewer employees as of the last day of the preceding taxable year.

This bill would, under both laws, for taxable years beginning on or after January 1, 2012, expand the definition of "qualified employer" to mean a taxpayer that employed 50 or fewer employees as of the last day of the preceding taxable year.

*This bill would require the Franchise Tax Board to report to the Legislature, on or before January 1, 2013, the number of employers*

*that were allowed a credit, the amount of credits utilized and carried over, and the average number of employees hired, in connection with the above-described provisions.*

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 17053.80 of the Revenue and Taxation  
2 Code, as added by Section 3 of Chapter 10 of the Third  
3 Extraordinary Session of the Statutes of 2009, is repealed.

4 SEC. 2. Section 17053.80 of the Revenue and Taxation Code,  
5 as added by Section 3 of Chapter 17 of the Third Extraordinary  
6 Session of the Statutes of 2009, is amended to read:

7 17053.80. (a) For each taxable year beginning on or after  
8 January 1, 2009, there shall be allowed as a credit against the “net  
9 tax,” as defined in Section 17039, three thousand dollars (\$3,000)  
10 for each net increase in qualified full-time employees, as specified  
11 in subdivision (c), hired during the taxable year by a qualified  
12 employer.

13 (b) For purposes of this section:

14 (1) “Acquired” includes any gift, inheritance, transfer incident  
15 to divorce, or any other transfer, whether or not for consideration.

16 (2) “Qualified full-time employee” means:

17 (A) A qualified employee who was paid qualified wages by the  
18 qualified employer for services of not less than an average of 35  
19 hours per week.

20 (B) A qualified employee who was a salaried employee and  
21 was paid compensation during the taxable year for full-time  
22 employment, within the meaning of Section 515 of the Labor Code,  
23 by the qualified employer.

24 (3) A “qualified employee” shall not include any of the  
25 following:

26 (A) An employee certified as a qualified employee in an  
27 enterprise zone designated in accordance with Chapter 12.8

1 (commencing with Section 7070) of Division 7 of Title 1 of the  
2 Government Code.

3 (B) An employee certified as a qualified disadvantaged  
4 individual in a manufacturing enhancement area designated in  
5 accordance with Section 7073.8 of the Government Code.

6 (C) An employee certified as a qualified employee in a targeted  
7 tax area designated in accordance with Section 7097 of the  
8 Government Code.

9 (D) An employee certified as a qualified disadvantaged  
10 individual or a qualified displaced employee in a local agency  
11 military base recovery area (LAMBRA) designated in accordance  
12 with Chapter 12.97 (commencing with Section 7105) of Division  
13 7 of Title 1 of the Government Code.

14 (E) An employee whose wages are included in calculating any  
15 other credit allowed under this part.

16 (4) (A) For taxable years beginning on or after January 1, 2009,  
17 and before January 1, 2012, “qualified employer” means a taxpayer  
18 that, as of the last day of the preceding taxable year, employed a  
19 total of 20 or fewer employees.

20 (B) For taxable years beginning on or after January 1, 2012,  
21 “qualified employer” means a taxpayer that, as of the last day of  
22 the preceding taxable year, employed a total of 50 or fewer  
23 employees.

24 (5) “Qualified wages” means wages subject to Division 6  
25 (commencing with Section 13000) of the Unemployment Insurance  
26 Code.

27 (6) “Annual full-time equivalent” means either of the following:

28 (A) In the case of a full-time employee who was paid hourly  
29 qualified wages, “annual full-time equivalent” means the total  
30 number of hours worked for the taxpayer by the employee (not to  
31 exceed 2,000 hours per employee) divided by 2,000.

32 (B) In the case of a salaried full-time employee, “annual  
33 full-time equivalent” means the total number of weeks worked for  
34 the taxpayer by the employee divided by 52.

35 (c) The net increase in qualified full-time employees of a  
36 qualified employer shall be determined as provided by this  
37 subdivision:

38 (1) (A) The net increase in qualified full-time employees shall  
39 be determined on an annual full-time equivalent basis by

1 subtracting from the amount determined in subparagraph (C) the  
2 amount determined in subparagraph (B).

3 (B) The total number of qualified full-time employees employed  
4 in the preceding taxable year by the taxpayer and by any trade or  
5 business acquired by the taxpayer during the current taxable year.

6 (C) The total number of full-time employees employed in the  
7 current taxable year by the taxpayer and by any trade or business  
8 acquired during the current taxable year.

9 (2) For taxpayers who first commence doing business in this  
10 state during the taxable year, the number of full-time employees  
11 for the immediately preceding prior taxable year shall be zero.

12 (d) In the case where the credit allowed by this section exceeds  
13 the “net tax,” the excess may be carried over to reduce the “net  
14 tax” in the following year, and succeeding seven years if necessary,  
15 until the credit is exhausted.

16 (e) Any deduction otherwise allowed under this part for qualified  
17 wages shall not be reduced by the amount of the credit allowed  
18 under this section.

19 (f) For purposes of this ~~section~~, *all section*:

20 (1) All employees of the trades or businesses that are treated as  
21 related under either Section 267, 318, or 707 of the Internal  
22 Revenue Code shall be treated as employed by a single taxpayer.

23 (2) *In determining whether the taxpayer has first commenced*  
24 *doing business in this state during the taxable year, the provisions*  
25 *of subdivision (f) of Section 17276.20, without application of*  
26 *paragraph (7) of that subdivision, shall apply.*

27 (g) (1) (A) Credit under this section and Section 23623 shall  
28 be allowed only for credits claimed on timely filed original returns  
29 received by the Franchise Tax Board on or before the cut-off date  
30 established by the Franchise Tax Board.

31 (B) For purposes of this paragraph, the cut-off date shall be the  
32 last day of the calendar quarter within which the Franchise Tax  
33 Board estimates it will have received timely filed original returns  
34 claiming credits under this section and Section 23623 that  
35 cumulatively total four hundred million dollars (\$400,000,000)  
36 for all taxable years.

37 (2) The date a return is received shall be determined by the  
38 Franchise Tax Board.

39 (3) (A) The determinations of the Franchise Tax Board with  
40 respect to the cut-off date, the date a return is received, and whether

1 a return has been timely filed for purposes of this subdivision may  
2 not be reviewed in any administrative or judicial proceeding.

3 (B) Any disallowance of a credit claimed due to a determination  
4 under this subdivision, including the application of the limitation  
5 specified in paragraph (1), shall be treated as a mathematical error  
6 appearing on the return. Any amount of tax resulting from such  
7 disallowance may be assessed by the Franchise Tax Board in the  
8 same manner as provided by Section 19051.

9 (4) The Franchise Tax Board shall periodically provide notice  
10 on its Internet Web site with respect to the amount of credit under  
11 this section and Section 23623 claimed on timely filed original  
12 returns received by the Franchise Tax Board.

13 (h) (1) The Franchise Tax Board may prescribe rules,  
14 guidelines, or procedures necessary or appropriate to carry out the  
15 purposes of this section, including any guidelines regarding the  
16 limitation on total credits allowable under this section and Section  
17 23623 and guidelines necessary to avoid split-ups, shell  
18 corporations, partnerships, tiered ownership structures, or  
19 otherwise.

20 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
21 Division 3 of Title 2 of the Government Code does not apply to  
22 any standard, criterion, procedure, determination, rule, notice, or  
23 guideline established or issued by the Franchise Tax Board  
24 pursuant to this section.

25 (i) This section shall remain in effect only until December 1 of  
26 the calendar year after the year of the cut-off date, and as of that  
27 December 1 is repealed.

28 SEC. 3. Section 23623 of the Revenue and Taxation Code, as  
29 added by Section 8 of Chapter 10 of the Third Extraordinary  
30 Session of the Statutes of 2009, is repealed.

31 SEC. 4. Section 23623 of the Revenue and Taxation Code, as  
32 added by Section 8 of Chapter 17 of the Third Extraordinary  
33 Session of the Statutes of 2009, is amended to read:

34 23623. (a) For each taxable year beginning on or after January  
35 1, 2009, there shall be allowed as a credit against the "tax," as  
36 defined in Section 23036, three thousand dollars (\$3,000) for each  
37 net increase in qualified full-time employees, as specified in  
38 subdivision (c), hired during the taxable year by a qualified  
39 employer.

40 (b) For purposes of this section:

1 (1) “Acquired” includes any gift, inheritance, transfer incident  
2 to divorce, or any other transfer, whether or not for consideration.

3 (2) “Qualified full-time employee” means:

4 (A) A qualified employee who was paid qualified wages during  
5 the taxable year by the qualified employer for services of not less  
6 than an average of 35 hours per week.

7 (B) A qualified employee who was a salaried employee and  
8 was paid compensation during the taxable year for full-time  
9 employment, within the meaning of Section 515 of the Labor Code,  
10 by the qualified employer.

11 (3) A “qualified employee” shall not include any of the  
12 following:

13 (A) An employee certified as a qualified employee in an  
14 enterprise zone designated in accordance with Chapter 12.8  
15 (commencing with Section 7070) of Division 7 of Title 1 of the  
16 Government Code.

17 (B) An employee certified as a qualified disadvantaged  
18 individual in a manufacturing enhancement area designated in  
19 accordance with Section 7073.8 of the Government Code.

20 (C) An employee certified as a qualified employee in a targeted  
21 tax area designated in accordance with Section 7097 of the  
22 Government Code.

23 (D) An employee certified as a qualified disadvantaged  
24 individual or a qualified displaced employee in a local agency  
25 military base recovery area (LAMBRA) designated in accordance  
26 with Chapter 12.97 (commencing with Section 7105) of Division  
27 7 of Title 1 of the Government Code.

28 (E) An employee whose wages are included in calculating any  
29 other credit allowed under this part.

30 (4) (A) For taxable years beginning on or after January 1, 2009,  
31 and before January 1, 2012, “qualified employer” means a taxpayer  
32 that, as of the last day of the preceding taxable year, employed a  
33 total of 20 or fewer employees.

34 (B) For taxable years beginning on or after January 1, 2012,  
35 “qualified employer” means a taxpayer that, as of the last day of  
36 the preceding taxable year, employed a total of 50 or fewer  
37 employees.

38 (5) “Qualified wages” means wages subject to Division 6  
39 (commencing with Section 13000) of the Unemployment Insurance  
40 Code.

(6) “Annual full-time equivalent” means either of the following:

(A) In the case of a full-time employee who was paid hourly qualified wages, “annual full-time equivalent” means the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000.

(B) In the case of a salaried full-time employee, “annual full-time equivalent” means the total number of weeks worked for the taxpayer by the employee divided by 52.

(c) The net increase in qualified full-time employees of a qualified employer shall be determined as provided by this subdivision:

(1) (A) The net increase in qualified full-time employees shall be determined on an annual full-time equivalent basis by subtracting from the amount determined in subparagraph (C) the amount determined in subparagraph (B).

(B) The total number of qualified full-time employees employed in the preceding taxable year by the taxpayer and by any trade or business acquired by the taxpayer during the current taxable year.

(C) The total number of full-time employees employed in the current taxable year by the taxpayer and by any trade or business acquired during the current taxable year.

(2) For taxpayers who first commence doing business in this state during the taxable year, the number of full-time employees for the immediately preceding prior taxable year shall be zero.

(d) In the case where the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and succeeding seven years if necessary, until the credit is exhausted.

(e) Any deduction otherwise allowed under this part for qualified wages shall not be reduced by the amount of the credit allowed under this section.

(f) For purposes of this section, ~~all section:~~

(1) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.

(2) *In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision (g) of Section 24416.20, without application of paragraph (7) of that subdivision, shall apply.*

(g) (1) (A) Credit under this section and Section 17053.80 shall be allowed only for credits claimed on timely filed original returns received by the Franchise Tax Board on or before the cut-off date established by the Franchise Tax Board.

(B) For purposes of this paragraph, the cut-off date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 17053.80 that cumulatively total four hundred million dollars (\$400,000,000) for all taxable years.

(2) The date a return is received shall be determined by the Franchise Tax Board.

(3) (A) The determinations of the Franchise Tax Board with respect to the cut-off date, the date a return is received, and whether a return has been timely filed for purposes of this subdivision may not be reviewed in any administrative or judicial proceeding.

(B) Any disallowance of a credit claimed due to a determination under this subdivision, including the application of the limitation specified in paragraph (1), shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.

(4) The Franchise Tax Board shall periodically provide notice on its Internet Web site with respect to the amount of credit under this section and Section 17053.80 claimed on timely filed original returns received by the Franchise Tax Board.

(h) (1) The Franchise Tax Board may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the limitation on total credits allowable under this section and Section 17053.80 and guidelines necessary to avoid split-ups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this section.

1 (i) This section shall remain in effect only until December 1 of  
2 the calendar year after the year of the cut-off date, and as of that  
3 December 1 is repealed.

4 *SEC. 5. (a) On or before January 1, 2013, the Franchise Tax*  
5 *Board shall report to the Legislature the number of employers that*  
6 *were allowed a credit and the amount of credits utilized and*  
7 *carried over pursuant to Sections 17053.80 and 23623 of the*  
8 *Revenue and Taxation Code. To the extent possible, the board*  
9 *shall also report the average number of employees that were hired*  
10 *by taxpayers that claimed the credit, and aggregate data and*  
11 *compare whether there were more employers claiming the credit*  
12 *year to year.*

13 *(b) It is the intent of the Legislature to compare this data with*  
14 *general economic trends to determine if the credit allowed under*  
15 *Sections 17053.80 and 23623 of the Revenue and Taxation Code*  
16 *increased employment overall in the state and specifically for small*  
17 *businesses.*

18 *(c) A report to be submitted pursuant to subdivision (a) shall*  
19 *be submitted in compliance with Section 9795 of the Government*  
20 *Code.*

21 ~~SEC. 5.~~

22 *SEC. 6.* This act provides for a tax levy within the meaning of  
23 Article IV of the Constitution and shall go into immediate effect.